

Dean Gazzo Roistacher LLP
Lee H. Roistacher, Esq. (SBN 179619)
440 Stevens Avenue, Suite 100
Solana Beach, CA 92075
Telephone: (858) 380-4683
Facsimile: (858) 492-0486
E-mail: lroistacher@deangazzo.com

Attorneys for Defendants
State of California by and through California
Highway Patrol and Officer Ramon Silva

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANDRA KIRKMAN AND
CARLOS ALANIZ,
INDIVIDUALLY AND AS
SUCCESSORS-IN-INTEREST TO
JOHN ALANIZ, DECEASED,

Plaintiff,

v.

STATE OF CALIFORNIA;
RAMON SILVA; AND DOES 1-10,
INCLUSIVE,

Defendant.

Case No.: 2:23-cv-07532-DMG-SSC

**OPPOSITION TO PLAINTIFFS'
MOTION IN LIMINE 2 TO
EXCLUDE DECEDENT JOHN
ALANIZ'S MEDICAL RECORDS**

Courtroom: 8C
Judge: Hon. Dolly M. Gee

FPTC: March 25, 2025, 2:00 p.m.

Trial Date: April 15, 2025, 8:30 a.m.

///

///

///

///

///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

INTRODUCTION.....5

ARGUMENT.....5

A. Evidence Of Alaniz’s Mental Health And Drug Use.....5

1. Evidence Of Alaniz’s Mental Health Is Relevant And Any
Privilege That Might Have Applied Has Been Waived As
Magistrate Judge Christensen Already Found In Her
Unchallenged Discovery Order.....5

2. Evidence Of Alaniz’s Drug Use Is Relevant To Damages.....10

B. Evidence Of Alaniz’s Mental Health And Drug Use Is Not
Inadmissible Character Evidence Under Federal Rule of Evidence 404...11

C. Records Documenting Alaniz’s Mental Health Or Drug Use Are Not
Inadmissible Hearsay.....11

D. Evidence Of Alaniz’s Mental Health And Drug Use Is Not More
Prejudicial Than Probative.....12

CONCLUSION.....12

TABLE OF AUTHORITIES

Cases

<i>A.H. v. County of Los Angeles, No. CV 22-03671-SB (ASx)</i> 2023 WL 3035349, at *3 (C.D. Cal. Jan. 19, 2023).....	7
<i>Arellano v. City of Santa Ana</i> 2015 U.S. Dist. LEXIS 200531 (C.D. Cal. Dec. 29, 2015).....	9
<i>Barillas v. City of L.A.</i> 2021 U.S. Dist. LEXIS 194094 (C.D. Cal. Apr. 12, 2021).....	8
<i>Boyd v. City & Cnty. of S.F.</i> 576 F.3d 938 (9th Cir. 2009).....	7, 11, 12
<i>Castro v. Cty. of L.A.</i> 2015 U.S. Dist. LEXIS 103945 (C.D. Cal. Aug. 3, 2015).....	10
<i>Conan v. City of Fontana</i> 2017 U.S. Dist. LEXIS 222451 (C.D. Cal. Oct. 6, 2017).....	10
<i>Ely v. Cty. of Santa Barbara</i> 2022 U.S. Dist. LEXIS 236211 (C.D. Cal. July 25, 2022).....	8
<i>Graham v. Connor</i> 490 U.S. 386 (1989).....	6
<i>Hermosillo v. Cty. of San Bernardino</i> 2017 U.S. Dist. LEXIS 230350 (C.D. Cal. Feb. 16, 2017).....	8
<i>Hickman v. Taylor</i> 329 U.S. 495 (1947).....	9
<i>Lindsey v. City of Pasadena</i> 2018 U.S. Dist. LEXIS 229889 (C.D. Cal. Jan. 9, 2018).....	8
<i>McCoy v. City of Vallejo</i> 2023 U.S. Dist. LEXIS 205639 (E.D. Cal. Nov. 16, 2023).....	9
<i>Nehad v. Browder</i> 2016 U.S. Dist. LEXIS 49252 (S.D. Cal. Apr. 11, 2016).....	9
<i>N.W. v. City of Long Beach</i> 2016 U.S. Dist. LEXIS 194469 (C.D. Cal. June 7, 2016).....	10
<i>Peck v. Cty. of Orange</i> 2023 U.S. Dist. LEXIS 237801 (C.D. Cal. May 22, 2023).....	10
<i>Sesma v. State of California,</i> 21-cv-01694-JWH-DTB.....	8
<i>Silva v. Chung</i> 2019 U.S. Dist. LEXIS 90091 (D. Haw. May 29, 2019).....	8, 9, 10

1	<i>Sullivan v. City of Buena Park</i>	
2	2022 U.S. Dist. LEXIS 91684 (C.D. Cal. Apr. 11, 2022).....	7, 8
3	<i>Trejo v. Cal. Forensic Med. Grp.</i>	
4	2024 U.S. Dist. LEXIS 164738 (S.D. Cal. Sep. 12, 2024).....	10
5	<i>United States v. Hall</i>	
6	419 F.3d 980 (9th Cir. 2005).....	11
7	<i>Valenzuela v. City of Anaheim</i>	
8	29 F.4th 1093 (9th Cir. 2022).....	9
9	<i>Valtierra v. City of L.A.</i>	
10	99 F. Supp. 3d 1190 (C.D. Cal. 2015).....	10
11	<i>Virginia v. Zaragoza v. Cnty. Of Riverside</i>	
12	2024 U.S. Dist. LEXIS 189610 (C.D. Cal. July 11, 2024).....	7, 12
13	<i>V.V. v. City of L.A.</i>	
14	2022 U.S. Dist. LEXIS 153572 (C.D. Cal. July 6, 2022).....	10
15	Statutes	
16	Fed. R. Evid. 403.....	12
17	Fed. R. Evid. 803.....	11

INTRODUCTION

This case arises out of the fatal shooting of John Alaniz by California Highway Patrol Officer Ramon Silva.

John Alaniz tried to kill himself by jumping in front of a big-rig on the I-105 freeway. Upon contact with the officers, Alaniz ignored commands to remove his hands from his pocket until he pulled object(s) from his pocket and immediately charged directly at the officers with his hands together and outstretched in front of him in the classic “shooter's stance.” Reasonably believing Alaniz had a gun and was going to shoot (as anyone would), Silva responded with objectively reasonable deadly force.

Plaintiffs are Alaniz’s parents and they seek damages on his behalf for the loss of his ability to enjoy his life (survivor damages) and on their own behalf for the loss of care, comfort, society and support (wrongful death damages).

Somewhat in a vacuum, plaintiffs seek to exclude from evidence Alaniz’s “medical records” and “psychological records” and any testimony about either.

Defendants are not intending to introduce “medical records” detailing Alaniz’s general health or any similar testimony.

Defendants are intending to introduce testimony and “medical records” or “psychological records” regarding Alaniz’s history of mental health issues and drug abuse. Defendants accordingly confine their arguments to that evidence, which is most definitely admissible.

The Court should deny plaintiffs’ motion.

ARGUMENT

A. Evidence Of Alaniz’s Mental Health And Drug Use

1. Evidence Of Alaniz’s Mental Health Is Relevant And Any Privilege That Might Have Applied Has Been Waived As Magistrate Judge Christensen Already Found In Her Unchallenged Discovery Order

Plaintiffs’ argument focuses solely on liability. Plaintiffs do not contest the relevance of Alaniz’s mental health to damages. Regardless, the evidence is

1 relevant to both issues as Magistrate Judge Christensen already concluded in
2 compelling the release of Alaniz's mental health records from the VA. *See* Doc.
3 41, p. 12 ("Because [Alaniz's] mental distress is at issue, the records sought are
4 highly relevant to the claims brought by Plaintiffs and to Defendants' anticipated
5 defenses")

6 Plaintiffs did not challenge Judge Christensen's order and it is now final.
7 *See* L.R. 72-2.1. Worse yet, they act like it does not exist. Plaintiffs simply
8 ignore it and make the same arguments Judge Christensen rejected.¹

9 Regarding relevance to liability, defendants cannot say it much better than
10 Judge Christensen's correct conclusion:

11 Plaintiffs assert that Decedent's 'mental health and medical records
12 from the VA' are not relevant, but rather, "tangential to the primary
13 issue in this case: whether Defendant Ramon Silva[s] use[] of
14 deadly force against [D]ecedent . . . was reasonable.' [Citation]. The
Court disagrees.

15 The records sought are directly relevant to at least Plaintiffs' Fourth
16 Amendment excessive force claim. The Fourth Amendment requires
17 the degree of force to be 'objectively reasonable' under the
18 circumstances. *Graham v. Connor*, 490 U.S. 386, 397 (1989).
19 Courts apply an objective inquiry to determine whether excessive
20 force was used. The 'reasonableness' of an officer's particular use
21 of force 'must be judged from the perspective of a reasonable
22 officer on the scene, rather than with the 20/20 vision of hindsight.'
23 *Id.* at 396. This test considers the 'totality of the circumstances,'
including 'the severity of the crime at issue, whether the suspect
24 poses an immediate threat to the safety of the officers or others, and
25 whether he is actively resisting arrest or attempting to evade arrest
26 by flight.' *Id.*

26 ¹ Perhaps plaintiffs thought the order was not important because it was a
27 discovery order. The latter is right but the former is not. Rejecting the precise
28 argument plaintiffs make here, Judge Christensen held the mental health
information was *relevant*.

1 Here, CHP officers responded to a call for assistance following a
2 report that Decedent was hit by a big rig on the interstate, was
3 jumping and running into traffic, and was exhibiting what appeared
4 to be suicidal behavior. (ECF 32 at 7.) Plaintiffs allege that, ‘despite
5 [Decedent] showing obvious signs of mental distress,’ Defendant
6 Silva used unreasonable excessive force against Decedent, who
7 “was unarmed” and “posed no immediate threat of death or serious
8 bodily injury to anyone,” resulting in Decedent’s death. (ECF 1-1 at
9 6–7.) Defendant Silva’s deposition testimony, as read into the
10 record at the hearing, reflected that prior to his arrival on scene,
11 Officer Silva had obtained some information through dispatch that
12 led him to believe that he would be responding to assist with
13 someone who might be experiencing a mental health crisis. (ECF 32
14 at 9.) The reasonableness inquiry is thus intertwined with
15 Decedent’s mental state during the incident and resulting conduct.
16 Accordingly, *‘[t]he Court finds that Decedent’s mental health,
17 history of mental health treatment and medication, and any related
18 diagnoses are relevant to the claims and defenses in this case
19 because the litigation turns on the determination of Decedent’s
20 mental health condition.’ A.H. v. County of Los Angeles*, No. CV
21 22-03671-SB (ASx), 2023 WL 3035349, at *3 (C.D. Cal. Jan. 19,
22 2023).

23 Doc. 41, pp. 4-5 (emphasis added).

24 Though correct on its own, defendants add that Alaniz’s prior mental
25 health history is relevant to defendants’ “suicide by cop” theory.

26 Evidence pertaining to Alaniz’s mental health, including prior suicide
27 attempts, is relevant to the “suicide by cop” theory. *Sullivan v. City of Buena
28 Park*, 2022 U.S. Dist. LEXIS 91684, at *12 (C.D. Cal. Apr. 11, 2022) (citing
Boyd v. City & Cnty. of S.F., 576 F.3d 938, 944 (9th Cir. 2009)). The evidence
supports defendants’ theory that Alaniz was attempting to commit “suicide by
cop” on the date of this incident by running at the officers in a shooter’s stance,
particularly where, as here, plaintiffs dispute what Alaniz was doing at the time
of the shooting. *Boyd*, 576 F.3d at 944-45, 947; *Virginia v. Zaragoza v. Cnty. of
Riverside*, 2024 U.S. Dist. LEXIS 189610, at *10-12 (C.D. Cal. July 11, 2024);

1 *Hermosillo v. Cty. of San Bernardino*, 2017 U.S. Dist. LEXIS 230350, at *3-4
2 (C.D. Cal. Feb. 16, 2017); *Sullivan*, 2022 U.S. Dist. LEXIS 91684, at *12-15;
3 *Barillas v. City of L.A.*, 2021 U.S. Dist. LEXIS 194094, at *20 (C.D. Cal. Apr.
4 12, 2021); *see also Ely v. Cty. of Santa Barbara*, 2022 U.S. Dist. LEXIS 236211,
5 at *24 (C.D. Cal. July 25, 2022) (“the suicide-by-cop theory would provide an
6 explanation for Defendants' version of events, thus making it relevant
7 testimony”).

8 Regarding damages, Judge Christensen again correctly found Alaniz’s
9 mental health relevant because of the damages plaintiffs seek:

10 The records sought are also relevant to Plaintiffs’ claimed wrongful
11 death and survival damages. Plaintiffs allege that, before his death,
12 Decedent suffered ‘loss of earning capacity.’ (ECF 1-1 at 9.) They
13 also allege that Plaintiffs have ‘been deprived of the life-long love,
14 companionship, comfort, support, society, care, and sustenance’ of
15 Decedent. (Id. at 11–12.) Discovery related to Decedent’s ability to
provide financial support and his familial relationships is relevant to
these allegations. See A.H., 2023 WL 3035349, at *3.

16 Doc. 41, pp. 5-6.

17 Other courts agree that evidence of a decedent’s mental health relevant to
18 damages. *Sesma v. State of California*, 21-cv-01694-JWH-DTB, Doc. 112, pp.
19 8-10 (finding decedent’s mental health evidence admissible on damages);
20 *Lindsey v. City of Pasadena*, 2018 U.S. Dist. LEXIS 229889, at *9 (C.D. Cal.
21 Jan. 9, 2018) (“Plaintiffs' request for damages places decedent's medical and
22 mental health prior to the incident at issue, as the documents would be relevant to
23 decedent's ability to provide care, sustenance, comfort, and society to
24 Plaintiffs.”); *Silva v. Chung*, 2019 U.S. Dist. LEXIS 90091, at *16 (D. Haw.
25 May 29, 2019) (“Defendants are able to inquire with witnesses about the
26 Decedent's quality of life, including his history of drug abuse and mental illness
27 for purposes of damages. [¶] The Decedent's history of drug abuse and mental
28

1 health treatment are relevant to the issue of life expectancy, occupation, and
2 enjoyment of life.”); *Nehad v. Browder*, 2016 U.S. Dist. LEXIS 49252, at *7
3 (S.D. Cal. Apr. 11, 2016) (finding mental health of decedent relevant to damages
4 for impairment of relationship with decedent); *Arellano v. City of Santa Ana*,
5 2015 U.S. Dist. LEXIS 200531, at *4-5 (C.D. Cal. Dec. 29, 2015) (“By seeking
6 damages for the loss of decedent's financial and emotional support, Plaintiffs
7 have made decedent's mental health relevant.”).

8 And evidence of Alaniz’s mental health is not only relevant to the
9 “wrongful death” damages but is also relevant to plaintiffs’ claim for Alaniz’s
10 “loss of life” damages. These damages, otherwise known as “hedonic” damages,
11 “purport to compensate a victim for the lost pleasure he would have enjoyed
12 from his life.” *Valenzuela v. City of Anaheim*, 29 F.4th 1093, 1096 (9th Cir.
13 2022).

14 Mental health, among other things, is relevant evidence for the jury to
15 consider in evaluating the quality of Alaniz’s life. *Silva*, 2019 U.S. Dist. LEXIS
16 90091, at *16; *McCoy v. City of Vallejo*, 2023 U.S. Dist. LEXIS 205639, at *12
17 (E.D. Cal. Nov. 16, 2023) (“[I]nformation regarding Mr. McCoy's physical and
18 mental health would be relevant to how Mr. McCoy lived and his life
19 expectancy and therefore relevant to damages.”).

20 Regarding the assertion of the right to privacy and the psychotherapist-
21 patient privilege over mental health information, Judge Christensen rightly found
22 those privileges were waived because this lawsuit places Alaniz’s mental
23 condition at issue regarding both liability and damages. Doc. 41, pp. 8-9; *see*
24 *Hickman v. Taylor*, 329 U.S. 495, 512 (1947) (party asserting privilege has the
25 burden to establish it applies). Moreover, since Judge Christensen’s order, one
26 of Alaniz’s treating psychiatrists was deposed and testified without objection to
27 Alaniz’s mental health history.

28 ///

2. Evidence Of Alaniz’s Drug Use Is Relevant To Damages

Defendants will be introducing evidence of Alaniz’s history of drug use, but not for liability purposes. That evidence is relevant to damages, an issue plaintiffs ignore.

Plaintiffs seek damages for the impairment of their relationship with Alaniz. Alaniz’s drug use is directly relevant to that relationship as many courts have found. *Trejo v. Cal. Forensic Med. Grp.*, 2024 U.S. Dist. LEXIS 164738, at *6 (S.D. Cal. Sep. 12, 2024); *Peck v. Cty. of Orange*, 2023 U.S. Dist. LEXIS 237801, at *15 (C.D. Cal. May 22, 2023); *V.V. v. City of L.A.*, 2022 U.S. Dist. LEXIS 153572, at *15 (C.D. Cal. July 6, 2022); *Conan v. City of Fontana*, 2017 U.S. Dist. LEXIS 222451, at *20 (C.D. Cal. Oct. 6, 2017); *Castro v. Cty. of L.A.*, 2015 U.S. Dist. LEXIS 103945, at *20 (C.D. Cal. Aug. 3, 2015).

And like Alaniz’s mental health, his drug use is relevant to the loss of life damages sought because drug use, and especially drug abuse, impacts the quality of one’s life. *Silva*, 2019 U.S. Dist. LEXIS 90091, at *16 (“The Decedent’s history of drug abuse and mental health treatment are relevant to the issue of life expectancy, occupation, and enjoyment of life.”); *N.W. v. City of Long Beach*, 2016 U.S. Dist. LEXIS 194469, at *14 (C.D. Cal. June 7, 2016) (history of drug use relevant to “life expectancy . . . , health, habits, activities, [and]]lifestyle.”)

Moreover, plaintiffs denied in their depositions having any knowledge of Alaniz’s drug use. Roistacher Declaration, Exh. 3 (Sandra Kirkman Deposition), pp. 19:25-20:6; id., Exh. 4 (Carlos Alaniz Jr. Deposition), p. 17:10-15. Thus, evidence of drug use is relevant to show the relationship was not as close as they claim. See *Valtierra v. City of L.A.*, 99 F. Supp. 3d 1190, 1194 (C.D. Cal. 2015) (“The Court agrees with defendants that evidence of plaintiffs’ claimed lack of awareness of decedent’s criminal history is relevant to show that plaintiffs’ relationships with decedent were not particularly close.”) (simplified).

///

B. Evidence Of Alaniz’s Mental Health And Drug Use Is Not Inadmissible Character Evidence Under Federal Rule of Evidence 404

“Evidence of crimes, wrongs, or prior bad acts is inadmissible ‘to prove the character of a person in order to show action in conformity therewith.’ *Boyd v. City & Cty. of S.F.*, 576 F.3d 938, 946-47 (9th Cir. 2009) (quoting Fed. R. Evid. 404(b)). Defendants are not using evidence of Alaniz’s drug use to establish liability. Thus, the evidence is not character evidence because it is not being used to show Alaniz acted in any particular way on the day of the incident.

Certainly, evidence of Alaniz’s mental health is not character evidence because it is a medical condition and not a crime, wrong or prior bad act. And as to damages, the evidence is not sought to prove anything about how Alaniz acted on the day of the incident. As to liability, it is questionable whether a prior suicide attempt is character evidence. Assuming it is, it is nonetheless admissible character evidence when used to support a “suicide by cop” theory. *Boyd*, 576 F.3d at 947.

C. Records Documenting Alaniz’s Mental Health Or Drug Use Are Not Inadmissible Hearsay

Plaintiffs move to exclude “reports and records” detailing Alaniz’s mental health and drug use as hearsay “without exception.”

Medical records are not hearsay under Rule 803(4) and 803(6). *See United States v. Hall*, 419 F.3d 980, 987 (9th Cir. 2005) (“The medical records from Hawkins' hospital visit and the notes of Hall's parole officer were records kept in the ordinary course of business, classic exceptions to the hearsay rule. Fed. R. Evid. 803(6). Hawkins' statements to Dr. Grover, including that her live-in boyfriend had caused her injuries, were statements made for the purpose of medical diagnosis or treatment, and also hearsay exceptions.”).

///

///

Moreover, defendants have listed as a witness one of the Alaniz's doctors that can testify as to his past mental health and drug use, and he laid the business record exception foundation in his deposition.

D. Evidence Of Alaniz's Mental Health And Drug Use Is Not More Prejudicial Than Probative

Plaintiffs' entire argument for exclusion under Rule 403 assumes that the evidence has little probative value as to *liability*. Plaintiffs make no argument that the purported prejudice outweighs the highly probative *damage* evidence.

And when mental health evidence is used to support a "suicide by cop" theory, courts have declined to find it inadmissible under Rule 403. *See, e.g., Zaragoza*, 2024 U.S. Dist. LEXIS 189610, at *12-13; *Barillas*, 2021 U.S. Dist. LEXIS 194094, at *19; *see also Boyd*, 576 F.3d at 947 (finding district court properly exercised discretion in refusing to exclude suicide by cop evidence under Rule 403).

CONCLUSION

The Court should deny plaintiffs' motion.

Dated: March 21, 2025

Dean Gazzo Roistacher LLP

By: /s/ Lee H. Roistacher

Lee H. Roistacher
Attorneys for Defendants
State of California by and through
California Highway Patrol and
Officer Ramon Silva

///

///

///

///

CERTIFICATION OF COMPLIANCE

The undersigned, counsel of record for Defendants State of California by and through California Highway Patrol and Officer Ramon Silva, certify that this Opposition To Plaintiffs' Motion In Limine 2 To Exclude Decedent John Alaniz's Medical Records contains 2,368 words, which:

 X complies with the word limit of L.R. 11-6.1.

 complies with the word limit set by court order dated [date].

Dated: March 21, 2025

/s/ Lee H. Roistacher

Lee H. Roistacher , declarant